UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF VS. TOBIAS RITESMAN, DEFENDANT	CR 18-40001 PETITION TO PLEAD GUILTY

COMES NOW, the Defendant Tobias Ritesman, by and through counsel, Tom Weerheim and, hereby moves this Court, pursuant to Local Rule 10.1(B), to allow Mr. Ritesman to plea open to Counts 1 through 18 of the Redacted Indictment (Doc 2), which in Counts 1 through 10 charge wire fraud, and Counts 11 through 18 charge mail fraud, and all counts charge aiding and abetting in violation of 18 U.S.C. §1343, 1341, 2.

Mr. Ritesman is entering this plea of guilty without having entered into any plea agreement with the Government. Mr. Ritesman agrees that he has been fully advised of his statutory and constitutional rights herein, and he has also been previously informed of the charges and allegations against him, and that the statutory maximum is twenty (20) years imprisonment per count, and a $250,000 fine per count, or both, and a period of supervised release of 3 years per count, and restitution.

Mr. Ritesman further understands that by entering a plea of guilty to Counts 1 through 18, he will be waiving certain statutory and constitutional rights to which he would otherwise be entitled. In addition, Mr. Ritesman understands that if is found by a preponderance of evidence to have violated a condition of supervised release, he could be incarcerated for an additional term upon revocation of his supervised release.

That in regard to his guilty plea to mail fraud, wire fraud, and aiding and abetting, Mr. Ritesman, believes that in regard to being sentenced for said offense, he would be entitled to a two-level decrease in his offense level pursuant to U.S.S.G. 3E1.1(a).

Furthermore, Mr. Ritesman agrees that the facts contained in his Factual Basis Statement, incorporated herein by this reference, provides the basis for his guilty plea, and is a true

statement of his actions with regard to the mail fraud, wire fraud, and aiding and abetting charges.

Dated and signed on this 15 day of April, 2019.

Tobias Ritesman

Tom Weerheim,
Attorney for the Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	CR 18-40001
Plaintiff,	GOVERNMENT'S MOTIONS IN LIMINE
vs.	
TOBIAS RITESMAN and TIMOTHY BURNS,	
Defendants.	

Comes now the United States of America, by and through Assistant United States Attorney Ann M. Hoffman, and submits the following motions in limine for consideration by the Court. Should the need arise to file additional motions in limine, the United States hereby notifies the Court and Defendants that it will promptly submit such motions for the Court's consideration.

1. Reference to Penalty or Punishment. The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from making any comment or reference, whether direct or indirect, to penalty or punishment in this case. By this motion, the Government seeks to preclude any reference to penalty or punishment at any point in the trial, but in particular, if a defendant chooses to testify, to preclude any questioning related to his "future plans." Penalty, punishment, or ramifications or consequences following imposition of punishment are not relevant in this case. This issue is not within the purview of the jury and should not be referred to either directly or

indirectly by either party. *See United States v. Thomas*, 895 F.2d 1198 (8th Cir. 1990).

2. Opinions on Guilt or Innocence. The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from making any comments or references, whether direct or indirect, expressing their opinion on the Defendants' guilt or innocence. Any attempt by defense counsel or any witness to express an opinion on the guilt or innocence of the Defendants is a clear invasion of the province of the jury, and should be prohibited. This evidence is also not relevant under Federal Rule of Evidence 401 and should not be admitted. *See Arpan v. United States*, 260 F.2d 649, 659 (8th Cir. 1958) (finding witness opinions as to accused's guilt irrelevant).

3. Reference to Matters Required to be Raised by Pretrial Motion (Fed. R. Crim. P. 12(b)(3)). The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from making any comments or references, whether direct or indirect, to matters that are required to be raised before trial, including allegations of improperly motivated prosecution, defects in the indictment, or suppression of any evidence.

Federal Rule of Criminal Procedure 12(b)(3) provides:

> The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:
>
> (A) a defect in instituting the prosecution, including:
>
> (i) improper venue;

(ii) preindictment delay;

(iii) a violation of the constitutional right to a speedy trial;

(iv) selective or vindictive prosecution; and

(v) an error in the grand-jury proceeding or preliminary hearing;

(B) a defect in the indictment or information, including:

(i) joining two or more offenses in the same count (duplicity);

(ii) charging the same offense in more than one count (multiplicity);

(iii) lack of specificity;

(iv) improper joinder; and

(v) failure to state an offense;

(C) suppression of evidence;

(D) severance of charges or defendants under Rule 14; and

(E) discovery under Rule 16.

Additionally, the Eighth Circuit Court of Appeals has stated a motion related to outrageous government conduct must be made as a pre-trial motion to dismiss the indictment, and that failure to do so waives the issue. *United States v. Nguyen*, 250 F.3d 643, 645-46 (8th Cir. 2001). This is because "[o]utrageous governmental conduct is a question of law and is resolved by the court, not the jury." *Id.* at 645 (citing *United States v. Russell*, 411 U.S. 423, 431-32 (1973)). It has long been held that requiring motions to suppress be made before trial is specifically designed to "eliminate from the trial disputes over police conduct not immediately relevant to the question of guilt." *Jones v. United States*, 362 U.S. 257, 264 (1960), overruled on other grounds by *United States v. Salvucci*, 448 U.S. 83 (1980). Similarly, allegations of government misconduct are not immediately relevant to the question of guilt and should be dealt with pre-trial by the Court, not during trial by the jury. Any attempt by defense counsel or any witness to present Rule 12 issues to the jury is not relevant evidence on the question of guilt and should not be allowed.

4. Reference to Government's Charging Decisions in This Matter. The Government moves this Court in limine for an order precluding the Defendants, their attorneys, or any witness from making any comments or references, whether direct or indirect, to the Government's charging decisions in this matter. Such references are irrelevant and overly prejudicial. The exclusion of evidence related to prosecutorial charging decisions, including which and how individuals were charged, has been upheld by several Circuits, as admission of such evidence "risks misleading the jury and confusing the issues." *United States v.*

Reed, 641 F.3d 992, 993-94 (8th Cir. 2011) (citations omitted). Any attempt by defense counsel or any witness to present evidence or argument concerning the Government's charging decisions in this case should not be allowed.

5. Hearsay Statements Made by the Defendants Offered By the Defendants. The Government moves the Court in limine for an order precluding the Defendants, their attorneys, or any witness from offering any out-of-court statement by a defendant of what he said regarding his guilt or innocence. Any out-of-court statement offered by a defendant of what he said regarding his guilt or innocence is inadmissible hearsay that does not meet any exception. Federal Rule of Evidence 801(d)(2)(A) allows the admission of a statement made by a party opponent "against" the party opponent. A statement is "not hearsay" when it is offered "against a party" and it is the party's own statement. *United States v. Worman*, 622 F.3d 969, 976 (8th Cir. 2010) (citing Fed. R. Evid. 801(d)(2)(A) and *United States v. Heppner*, 519 F.3d 744, 751 (8th Cir. 2008)). The Defendants should not be allowed to elicit testimony that they made statements to witnesses, outside of court, proclaiming their innocence of the charges in this Indictment. Such statements would be offered by the Defendants not against themselves and would not be admissible under Rule 801(d)(2)(A).

6. Request for Special Agent at Counsel Table.

The United States requests that Special Agent Matthew Miller be allowed to sit at counsel table during trial. Special Agent Miller is the main agent involved in the case, and the United States seeks leave from the sequestration

rule to allow Special Agent Miller to sit at the United States' counsel table during the entire trial. Fed. R. Evid. 615. *See United States v. Sykes*, 977 F.2d 1242, 1245 (8th Cir. 1992); *United States v. Jones*, 687 F.2d 1265, 1268 (8th Cir. 1982).

Federal Rule of Evidence 615 provides that:

> At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:
>
> (a) a party who is a natural person;
>
> (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;
>
> (c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or
>
> (d) a person authorized by statute to be present.

Special Agent Miller, as noted above, is the lead investigator on this case. As such, his presence is essential to presenting the Government's case.

7. Request for Victims to Sit in Courtroom during Trial.

The United States requests that the victims be allowed to sit in the courtroom during trial, after they testify. 18 U.S.C. § 3771(a)(3) (2015); Fed. R. Crim. P. 60(a)(2) (2015). Under Federal Rule of Criminal Procedure 60(a)(2), the Court "must not exclude a victim from a public court proceeding involving the crime," unless it is determined on the record by clear and convincing evidence that the victim's testimony would be materially altered. The United States requests that, to the extent allowable under Rule 60 and at the Court's discretion as provided in the rule, the victims should be permitted to observe the

proceedings, and it seeks leave from the sequestration rule to allow the victims to watch the proceedings and trial. *See* Fed. R. Evid. 615.

8. Sequestration of Witnesses.

The United States moves that all witnesses for the United States, other than those proposed above, and for the Defendants be sequestered. Federal Rule of Evidence 615.

Dated and electronically filed this 16th day of April, 2019.

RONALD A. PARSONS, JR.
United States Attorney

/s/ ANN M. HOFFMAN

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF VS. TOBIAS RITESMAN, DEFENDANT	CR 18-40001 FACTUAL BASIS STATEMENT

The undersigned hereby stipulate that the following facts are true, and establish a factual basis for Mr. Ritesman's plea of guilty to mail fraud, wire fraud, and aiding and abetting pursuant to 18 U.S.C. §§1343, 1341, and 2.

Beginning on or about May 3, 2016, and continuing through August 1, 2017, in the District of South Dakota, the Defendant, Tobias Ritesman, sought to, or intended to obtain money from other people by means of false pretenses.

In approximately 2012, the Defendant established a company known as Ritesman Enterprises, Inc. ("REI"). The Defendant was seeking to establish an aquaponics facility in Brookings, South Dakota. The purported objective of the facility was to raise fish and grow plants hydroponically.

The Defendant solicited investors for this project using material misrepresentations and omissions. Based upon the false and fraudulent representations, individuals paid money in the form of personal checks, cashier's checks, or wire transfers to the Defendant in exchange for an ownership interest in the aquaponics facility.

Specifically, accredited investors received a Private Placement Memorandum (PPM) for SD Food Security, LLC starting in June of 2016 which indicated that they could buy shares in the aquaponics project for $25,000.00 per unit. This PPM included false and misleading information.

The Private Placement Memorandum detailed the managing partners' backgrounds. Within the PPM, Defendant Ritesman made the representation that he held an MBA from UCLA, which he did not. Furthermore, it included language that the parent company, Global Aquaponics would retain a 51% equity share in the project which would amount to $5.6 million, when Global

Aquaponics did not have that amount of cash on hand.

Based upon those false and misleading statements, on multiple occasions during the relevant time period, the Defendant caused funds from investors to be deposited into bank accounts that either he or his co-defendant controlled. The Defendant used a portion of investor funds for his own purposes and to his own benefit rather than for the aquaponics facility. This included the interstate wire transmissions in Counts 1 through 10, and mail communications listed in Counts 11 through 13.

In regard to Count 1, in the summer of 2016, an agent of Defendant Ritesman met with C.S. The agent relied upon the PPM and made misrepresentations that the aquaponics facility would take two to three years to turn a profit. As a result of these misrepresentations, C.S. wrote a check for $40,000 to Ritesman Enterprises on August 2, 2016. The funds from the check were sent electronically from American Bank & Trust in South Dakota to US Bank in South Dakota through the Federal Reserve Bank.

In regard to Count 2, in the Spring of 2016, an agent of Defendant Ritesman met with M.L. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, M.L. wrote a check to Ritesman Holdings for $20,000 on August 3, 2016. The funds from the check were sent electronically from the State Bank of Lismore in Minnesota to US Bank of South Dakota through the Federal Reserve Bank.

In regard to Count 3, in 2016, an agent of Defendant Ritesman met with D.W. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, on August 25, 2016, D.W. wrote a check for $25,000 to South Dakota Food Security. The funds from the check were sent electronically from Wells Fargo Bank in South Dakota to First Bank & Trust in South Dakota through the Federal Reserve Bank.

In regard to Count 4, in late summer or early fall of 2016, an agent of Defendant Ritesman met with M.A. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, on September 12, 2016, M.A. wrote a check for $50,000 to South Dakota Food Security. The funds from the check were sent from the Bank of New York Mellon in New York to First Bank & Trust in South Dakota through the Federal Reserve Bank.

In regard to Count 5, in September of 2016, an agent of Defendant Ritesman met with J.A. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, on September 17, 2016, J.A. wrote a for $25,000 check to South Dakota Food Security. The funds from the check were sent from the US Bank in Missouri to First Bank & Trust in South Dakota through the Federal Reserve Bank.

In regard to Count 6, in the fall of 2016, an agent of Defendant Ritesman met with P.C. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, his wife, A.C. wrote a check for $25,000 to South Dakota Food Security on September 21, 2016. The funds from the check were sent from the US Bank in Minnesota to US Bank in South Dakota through the Federal Reserve Bank. Defendant Ritesman used a portion of these funds for his own purposes and to his own benefit.

In regard to Count 7, in late 2015/2016, an agent of Defendant Ritesman met with D.K. and gave him a copy of the PPM. Based upon the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, on September 21, 2016, D.K. made a wire transfer from IRA Resources to South Dakota Food Security in the amount of $50,000. The funds were electronically transferred from IRA Resources in California to US Bank in South Dakota.

In regard to Count 8, in early 2017, L.P. had a meeting with Defendant Ritesman, where Ritesman made statements that L.P. would have his principal investment returned to him within three years, and that buyers were already lined up to pre-purchase the food produced by the aquaponics facility. Based upon these misrepresentations, on January 29, 2017, L.P. wrote a check for $12,500 to purchase one-half share. The funds from the check were sent from Plains Commerce Bank in South Dakota to US Bank in South Dakota through the Federal Reserve Bank.

In regard to Count 9, in late 2016, an agent of Defendant Ritesman met with J.W. where the agent made statements that the produce from the facility had already been pre-sold, when it it in fact had not. In addition, the agent made misrepresentations that South Dakota Food Securities had received a $3 million dollar grant. Based upon the misrepresentations, on February 27, 2007, J.W. wrote a check for $25,000 to South Dakota Food Security. The Funds from the check were sent from First Premier Bank in South Dakota to US Bank in South Dakota through the Federal Reserve Bank.

In regard to Count 10, in March or early April of 2017, Defendant Ritesman met with E.U. where Ritesman made statements that the land in Brookings had been purchased when it had not. Based upon the misrepresentations, E.U. purchased a $25,000 cashier's check from his bank to South Dakota Food Security.

In regard to Count 11, in 2014, investor K.O. met with Defendant Ritesman where he made false and misleading statements that he had a degree from UCLA. He made further statements that she would have her initial investment back within one year, and could return up to $1.5 million. As a result, on June 3, 2016, she invested $20,000 with Ritesman Enterprises and received a certificate of membership in RI Holdings in the mail from Tobias Ritesman.

In regard to Count 12, in September of 2016, based on the misrepresentations within the PPM, including that Global Aquaponics had $5.6 million on hand, J.A. invested $25,000 with South Dakota Food Security. As a result, J.A. received a certificate of membership in SD Food Security in February of 2017 in the mail from Tobias Ritesman.

In regard to Count 13, in early 2017, L.P. had a meeting with Defendant Ritesman, where Ritesman made statements that L.P. would have his principal investment returned to him within three years, and that buyers were already in place to pre-purchase the food produced by the aquaponics facility. Based upon these misrepresentations, on January 29, 2017, L.P. wrote a check for $12,500.00 to purchase one-half share. As a result, L.P. received a certificate of membership in SD Food Security on March 8, 2017 in the mail from Tobias Ritesman.

In regard to Counts 14 and 15, after the severance in ownership with his co-defendant, Defendant Ritesman mailed form letters to investors including the following:

Count 14, a letter to J.M. on March 16, 2017; and

Count 15, a letter to P.C. on March 16, 2017

In that form letter dated March 16, 2017, Defendant Ritesman misrepresented that Global Aquaponics was awarded a $3.7 million bond in December of 2016 from the Value Added Finance Authority. In fact, Global Aquaponics Inc. had only obtained approval to issue a bond. Investors believed that the company had the money in hand when they did not.

In regard to Counts 16 and 17, Defendant Ritesman mailed a second form letter to investors including the following:

Count 16, a letter to J.M. on June 19, 2017

Count 17, a letter to D.K. on June 19, 2017

In that letter dated June 19, 2017, Defendant Ritesman solicited current investors for the second phase of the PPM in furtherance of the misrepresentations of the initial PPM. No second PPM was ever approved by the State of South Dakota.

In regard to Count 18, Defendant Ritesman mailed a third form letter to investors including a letter to D.K. on October 9, 2017. In it, Defendant Ritesman made misrepresentations that the aquaponics project was still viable and going forward in furtherance of the previous false and misleading statements within the original PPM.

The Defendant's actions were in violation of 18 U.S.C. §1343, 1341, 2.

Dated and signed on this 15 day of April, 2019.

Tobias Ritesman

Tom Weerheim,
Attorney for the Defendant